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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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23117 7590 11/12/2003
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EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/12/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,462

Applicant(s)

MONDET, JEAN

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13 and 15-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-10 and 15-37 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the response filed 9/8/03. Claims pending are 1-6, 8-13 and 15-37.

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. The rejection of Claims 1-3, 8-10, 15-21, 27-35 and 37 under 35 U.S.C. 102(b) as being anticipated by Lee et al. is maintained for the reasons of the record.

Claim Rejections - 35 USC § 103

3. The rejection of Claims 22-26 and 36 under 35 U.S.C. 103(a) as being unpatentable over Lee et al. in view of Mellul et al. is maintained for the reasons of the record.

Response to Arguments

4. Applicant's arguments filed 9/8/03 have been fully considered but they are not persuasive.

The Applicant argues that Lee et al. do not teach the particular polyorganosiloxanes of the instant invention. See p. 4 of the response. In response, it is noted that the vinyl-terminated polydimethylsiloxanes of Lee et al. are within the scope of the instant claims because they contain organosiloxy units (i.e. dimethylsiloxy units wherein R=methyl; b=0 and a=2) and end groups capable of forming hydrogen bonds (i.e. vinyl groups). Further, the Applicant argues that unlike Lee's polyorganosiloxanes, the polyorganosiloxanes of Claim 1 of the instant invention are not crosslinked. In response, it is noted that the instantly claimed polyorganosiloxanes are not limited to non-crosslinked polyorganosiloxanes. The instant claims

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require that the polyorganosiloxanes contain at least two organosiloxy units of the given formula and at least two side or end groups being capable of forming at least one hydrogen bond with one or more partner groups. Both crosslinked and non-crosslinked polyorganosiloxanes are within the broad scope of the instant claims. With respect to the Mellul reference, the Applicant argues that "there was no suggestion or teaching in Mellul et al., when compared to the teaching of Lee et al, leading one of ordinary skill in the art to a method of gelling or a cosmetic composition of the presently claimed invention. There was no suggestion for one of ordinary skill in the art, when considering Lee et al in view of Mellul et al, to modify the structure of silicones in order to gel a cosmetically acceptable (sic!), as presently claimed." See p. 7 of the response. In response, it is noted that Mellul et al. is a supplemental reference cited for its narrow teaching of employing solid fatty substances as well as various additives, fatty esters and alcohols in cosmetic compositions for their art-recognized purpose. As discussed previously, Lee et al. teaches the polyorganosiloxanes of the instant claims but fails to teach specific cosmetic fatty substances of Claims 22-26 and 36. However, it is conventional in the art to employ solid fatty substances of the instant invention, as well as various additives, fatty esters and alcohols in cosmetic compositions, as taught by Mellul et al. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use cosmetic fatty substances of Mellul et al. for make-up compositions of Lee et al. for their art-recognized purpose and with a reasonable expectation of beneficial results such as improved skin feel and emollient properties of the compositions.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600